

PURPOSE

To establish when an authorization is needed, or not, to use and disclose individually identifiable health information or protected health information (PHI) for the Michigan Department of Health and Human Services (MDHHS).

REVISION HISTORY

Reviewed: 01/01/2022.

Next Review: 01/01/2023.

DEFINITIONS

APL 680 Privacy and Security Policies and Procedures Definition Glossary.

POLICY**Authorization Required**

The following uses and disclosures require a signed HIPAA compliant authorization:

- Marketing.
- Sale of PHI Psychotherapy notes.
- To disclose to third parties on the request of the individual or a personal representative of the individual.
- When individual admits to a crime when requesting treatment, or while in treatment, except as required by law.

Permitted Uses and Disclosures - No Authorization Required

MDHHS is permitted to use or disclose protected health information without a valid authorization as follows; see procedures for specific requirements and details.

- About child or elder victims of abuse, neglect, or domestic violence.
- For treatment, payment, or health care operations.
- In a limited data set with a signed data use agreement; for public health activities.
- For health oversight activities.

- For law enforcement purposes.
- About decedents.
- For cadaver organ, eye, tissue donation.
- For research purposes under certain conditions.
- To avert serious health and safety threats, for specialized government functions, for workers compensation.
- To assist disaster relief agencies.
- For some purposes required by law.

**Other applicable privacy or confidentiality laws can be more restrictive than HIPAA. Laws that provide the individual with greater privacy protection or rights must be complied with. (Examples of state and federal laws are: Medicaid, Substance Abuse, Public Health Code, HIV/AIDS/STDs, and Mental Health Code). When in doubt, contact the Compliance and Data Governance Bureau or the Legal Affairs Administration for assistance.*

Uses and Disclosures that require giving an individual the right to agree or object, opt out, or be notified of the use or disclosure; see procedures for specific requirements and details.

- Place name in facility directory (agree or object).
- To family members and others in certain situations (agree or object).
- About adult victims of abuse, neglect, or domestic violence (agree or object).
- For judicial and administrative proceedings, when in response to a subpoena, discovery request, or other lawful process (agree or object).
- Victims of a crime (may agree or object or must be informed with some exceptions); For Fundraising activities (opt out).
- For Disaster Relief, if the individual has capacity, and as long as the requirement does not interfere with the ability to respond to the emergency.

- For some purposes required by law.

Required Disclosures

MDHHS will use or disclose protected health information:

- To the individual, when requested under, and as required under Individual Rights; as required by law.
- When required by the Secretary of the Department of Health and Human Services to investigate MDHHS's compliance with the privacy regulations.

PROCEDURE**Permitted Uses and Disclosures**

MDHHS is permitted to use or disclose PHI without an authorization as follows:

To avert serious health and safety threats *

(1) Disclosure may be made if MDHHS, in good faith, believes:

- (i) (A) The disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and (B) is to a person(s) able to prevent or lessen the threat, including the target of the threat or
- (ii) Disclosure is necessary for law enforcement authorities to identify or apprehend an individual:
 - (A) Because individual made statement admitting participation in a violent crime that the MDHHS believes may have caused serious physical harm to a victim or (B) where it appears the individual may have escaped from lawful custody (164.501).

Cadaver organ, eye, tissue donation

See MDHHS Decedents Policy and Procedure.

Child or elder victims of abuse, neglect, or domestic violence *

To a government authority, including a social service or protective services agency, authorized by law to receive such report.

About decedents *

See MDHHS Decedents Policy and Procedure.

To assist disaster relief agencies *

To a public or private entity authorized by law or by its charter to assist in disaster relief efforts.

The disclosure is made to coordinate efforts to notify, (or locate, or identify) an individual's family member, friend, personal representative, or other person involved with the individual's care. The disclosure can include information about the individual's location, general condition, or death.

The information can be used by the organizations to help individuals obtain needed medical care for injuries or other health conditions caused by a disaster.

Disclosure is always permitted to a provider for treatment purposes.

For health oversight activities*

For health oversight activities that is authorized by law.

Example:

- Audits.
- Civil administrative or criminal investigations-proceedings-actions.
- Inspections.
- Licensure or disciplinary actions.

Necessary to oversee:

- Health care system,
- Government benefit programs (health info relevant to eligibility).
- Compliance with program standards.
- Entities that are subject to civil rights laws for which health information is necessary for determining compliance.

(Should not include investigation of the individual except where it relates to an individual obtaining public health benefits; see Rule.)

For judicial and administrative proceedings *

1. In response to:

An order of a court or administrative tribunal, - disclose only the PHI expressly authorized by the order.

2. In response to:

- A subpoena.
- Discovery request.
- Other lawful process...

The individual may object. Requestor must assure MDHHS that a good faith effort was made to notify the individual of the request for PHI or that a qualified protective order for the PHI has been secured; see rule.

For law enforcement purposes *

For a law enforcement purpose to a law enforcement official to report information as required by law...

- (1) PHI may be disclosed pursuant to process and as otherwise required by law, i.e. court order, subpoena or summons, administrative subpoena, etc. Limit PHI disclosed to what is relevant to the request.
- (2) Limited information for identification and location purposes - of a suspect, fugitive, material witness or missing person may be disclosed. (Process, subpoena, court order not required.)

The only information that may be disclosed is:

- Name and address.
- Date and place of birth.
- Social security number.
- ABO blood type and rh factor.
- Type of injury.
- Date and time of treatment.
- Date and time of death.
- Description of physical characteristic.

Information **not** to be disclosed in this instance:

- DNA.
 - Dental records.
 - Typing.
 - Samples or analysis of fluids or tissue.
- (3) PHI disclosure concerning **Victims of a Crime**. Permitted unless unable to obtain the victim's agreement - (see requirements 164.512(f)(3)(ii)).
- (4) PHI disclosure concerning Decedents if there is a suspicion the death was the result of criminal conduct.
- (5) PHI evidence of crime on premises of the covered entity. (MDHHS has good faith belief the PHI evidence of the crime.)
- (6) **A provider may disclose PHI in responding to a medical emergency resulting from a crime.**

In a limited data set with a signed data use agreement *

In a limited data set and MDHHS has entered into a data use agreement with the recipient of the information as outlined in the rule; see MDHHS policy and procedure on Limited Data Set.

For public health activities *

To a public health authority that is authorized by law to collect or receive such information.

To report:

- Disease or injury.
- Exposure to communicable disease.
- Vital statistics,

Or to conduct:

- Public health surveillance.
- Investigations.
- Interventions.

To a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect.

To a person under FDA jurisdiction who oversees the quality, safety or effectiveness of FDA regulated products or activities:

- To collect or report adverse events, product defects or problems, or biological product deviations.
- To track FDA regulated products.
- To enable product recalls, repairs, or replacement.
- To conduct post marketing surveillance.

To a person who has been exposed to a communicable disease, if a law authorizes notification of the individual.

To an employer when the individual is a member of the workforce and information is used to conduct a medical surveillance of the workplace, or to evaluate whether a work related illness or injury occurred.

For research purposes under certain conditions *

See MDHHS Research Policy and Procedures.

For Treatment (TPO) *

For MDHHS's own treatment purpose or to a provider for treatment
45 CFR 164.506

For **Provision** of Treatment...

For **Coordination** of Treatment...

For **Management** of Treatment...

For **Consultation** between providers...

For **Referral** - between one or more provider...

For Payment (TPO)*

- For MDHHS's own Payment purposes
- To another covered entity or provider for that entity's payment activities 45 CFR 164.506

For **Premiums** to Health Plans...

To **Obtain or provide reimbursement** for the provision of healthcare...

For **Eligibility Determination**...

For **Coordination of Benefits...**

For **Cost Sharing...**

For **Adjudication...**

For **Subrogation...**

For **Risk Adjusting...**

For **Billing...**

For **Claims management...**

For **Collections...**

For **Reinsurance...**

To **Review for medical necessity**, Health Plan coverage, Appropriateness of Care, Justification of Charges...

For **Utilization Review**, Pre-certification, Preauthorization, Concurrent and Retrospective Review...

For a **Consumer reporting** agency to collect premiums or reimbursement - the following information can be released:

- Name and address.
- Date of Birth.
- SS#.
- Payment history.
- Account #.
- Name and address of the health care provider and/or plan.

For Health Care Operations (TPO)*

- For MDHHS's own Operations.
- To another covered entity for its operations IF (all of following):
 - 1) Each covered entity has or had relationship with the individual.
 - 2) The PHI pertains to the relationship.
 - 3) The disclosure is for the purpose of health care fraud and abuse detection or compliance, or for one of the descriptions in number 1 or 2 following.

Health Care Operations includes the following activities:

1. For Quality Assessment and Improvement activities - outcomes evaluations, development of clinical guidelines, protocol development, case management, care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment.
2. To Review competence or qualifications of providers; practitioner or health plan performance; evaluation of practitioners and provider performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing.
3. For Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding securing or placing a contract for reinsurance of risk relating to claims for health care (unless health insurance benefits not placed with the health plan).
4. To Conduct, arrange for medical review, legal services, auditing, including fraud and abuse detection and compliance programs.
5. For Business planning and development, such as conducting cost management and planning related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies.
6. For Business management and general administrative activities of the entity, including:
 - Management activities related to complying w/privacy regulations.
 - Customer service - includes data analyses w/o release of PHI to a policyholder, plan sponsor or customer, Resolution of internal grievances.
 - The sale transfer, merger or consolidation of all or part of the covered entity with another covered entity.

For Workers Compensation

As authorized by workers' compensation laws.

Disclosures requiring that the client have the right to agree or object (no authorization required, but the client's agreement or objection must be documented).

Adult victims of abuse, neglect, or domestic violence

To a government authority, including a social service or protective services agency, authorized by law to receive such reports and to the extent the report is required by law. An adult may have the option to not agree to the report. The adult victim must be informed - but there are exceptions.

Facility Directory*

State Facilities will each have their own facility directory procedures.

To family members and others in certain situations *

See MDHHS Personal Representatives Policy and Procedure.

Required Disclosures

MDHHS will use and disclose protected health information:

To the Individual

When requested under Individual Rights; see MDHHS Individual Right policies and procedures.

When required by the Secretary of the Department of Health and Human

To investigate MDHHS's compliance with the Privacy Regulations.

Services/OCR

As required by State Law when not pre-empted by HIPAA.

See Pre-emption Analysis Flow Chart on HIPAA Privacy and Security section of MDHHS intranet.

REFERENCES

45 CFR §160.304, §160.310, §164.501, §164.502, §164.506,
§164.508, §164.510, §164.512,

APL 680 HIPAA Policies and Procedures Definition Glossary,
MDHHS Individual Right Policies, MDHHS Personal
Representatives Policies, MDHHS Research Policy and
Procedures, MDHHS Limited Data Set, MDHHS Decedents
Policies and Procedures

CONTACT

For additional information concerning this policy, contact the
MDHHS Compliance and Data Governance Bureau at
MDHSPrivacySecurity@michigan.gov.